IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/06/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.7851 OF 1999 AND WRIT PETITION NO.7869 OF 1999
AND W.P.NO. 18379 OF 1999
AND
WMP.NOS.11181, 11202 AND 26819 OF 1999

R.Arumugam ... Petitioner in all the Wps.

-Vs-

Government of Tamil Nadu,
rep.by the Assistant Director,
Khadi & Village Industries,
Tamil Nadu,
Khadi & Village Industries Board,
Virudhunagar ... Respondent in all the Wps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue writs of Ceriorari(in Wps.7851 and 18379/1999) and Certiorarified Mandamus (in WP.7869/1999) as stated therein.

For petitioner : Mr.K.V.Srinivasaraghavan

For respondent : Mr.B.Dhinesh Kumar

:COMMON ORDER

All the above three writ petitions have been filed by one and the same petitioner, the first one in W.P.No.7851 of 1999 praying to issue a writ of Certiorari calling for the records relating to the respondent's show-cause notice issued to the petitioner bearing No.6813/C1/9 3, dated 26.3.1993 and quash the same in so far as the petitioner is concerned; the second one in W.P.7869 of 1999 praying to issue a Writ of Certiorarified Mandamus calling for the records in respect of Letter No.48807/O2/96, dated 18.2.1999 of the respondent, quash the same and consequently direct the respondent to sanction payment of full pension and Death-cum-Retirement Gratuity as per rules, together with interest at 15% p.a. on the Death-cum-Retirement Gratuity from 1.10.1 996 to the date of payment with costs and the third writ petition in W.P.No.18379 of 1999 has been filed praying to issue a Writ of Certiorari to call for the records of the

respondent relating to the charge memo. No.59319/E3(2)/99-2, dated 15.10.1999 and quash the same.

2. For easy reference and for the sake of convenience, W.P.Nos.7851 of 1999, 7869 of 1999 and 18379 of 1999 are hereinafter referred to as the first, second and the third writ petitions respectively.

3. In the affidavits filed in support of the above writ petitions, which are common regarding the facts of the case but differing at the last phase, sticking to the prayers, the petitioner would submit that having joined the services of the Tamil Nadu Khadi and Village Industries Board as a Junior Assistant in 1963, he was promoted Assistant Director in June, 1992 and served in various places prior to his retirement of superannuation on 30.9.1996 and in fact by proceeding dated 24.9.1996, the respondent permitted him to retire from the Board's service on 30.9.1996 on attaining the age of superannuation.

4. The petitioner would then quote Regulation 48 of the Tamil Nadu Khadi and Village Industries Board Service Regulations, 1966 and would submit that the said Regulations Mutatis mutandis apply to the Members of the Board's Service in the matter of pay, allowances, Travelling Allowance, Leave Salary and other conditions of service; that on 10.3.1993, the respondent accorded sanction for the payment of provisional pension at Rs.1,498/= per month to the petitioner for a period of one year from 1.10.1996 to 30.9.1997 or till the finalisation of the pension, whichever is earlier; that in 1999, by letter dated 18.2.1999, it was revealed that certain audit objections during the petitioner's service have been raised and only based on the outcome of the decision arrived at, his retirement benefits would be allowed and till then, only provisional pension could be allowed; that in April, 199 9, the petitioner filed the first writ petition above to quash the show-cause notice dated 26.3.1999 and this Court admitted the same and also ordered interim injunction on 9.7.1999 in W.M.P.No.11181 of 1999 .

5. The petitioner would also submit that he also filed the second writ petition above with the prayer extracted therein and in this writ petition also, in W.M.P.No.11203 of 1999, this Court directed the respondent to pay a sum of Rs.50,000/= to the petitioner towards Dearness Allowance on Provisional Pension within six weeks; that while so, on 17.10.1999, the charge memo. dated 15.10.1999 which is the subject matter of the third writ petition above had been issued by the respondent under Regulation 34(b) of the Tamil Nadu Khadi and Village Industries Board Service Regulations and Rule 9(2)(b) of the Pension Rules of Tamil Nadu; that the said letter contained two charges relating to the purchase of silk cotton during August, 1995 for which the petitioner sent his reply dated 29.10.1999 expressing his inability to submit his explanation and took time. Further stating that the impugned charge memo. dated 15.10.1999 has been issued in violation of the Pension Rules and the law laid down by the Supreme Court, the petitioner would file the third writ petition above on certain grounds as brought forth in the said writ petition.

6. In the grounds of the third writ petition, the petitioner would extract Pension Rule 9(2)(b) and 9(2)6) and would submit that any

departmental proceedings, against a retired Government Servant, could be initiated only within the parameters of these Rules. The petitioner would also quote the decision of the Apex Court reported in A.I.R. 1954 (SC) 340 wherein it has been held that `the defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority and such a defect cannot be cured even by consent of parties' and would submit that the said proposition of law applies squarely to his case. On such grounds, the petitioner would pray to the relief in the third writ petition

7. In the counter affidavit filed on behalf of the respondent in the first writ petition above, it would be submitted that the respondent has been wrongly shown as representing the Government of Tamil Nadu and that he cannot represent the Government and at this score itself, the writ petition becomes liable to be dismissed; that while the writ petitioner was serving as the Assistant Director of Khadi and Village Industries at Virudhunagar from 1.10.1993 to 14.5.1995, he was also acting as the Chairman of the Purchase Committee to purchase neem seeds to the Board for the year 1993-94, 1994-95 and 1995-96 and it came to be found that the purchases were of inferior quality and the price fixed was much more than the market rate thus causing a loss of Rs.3,38,406/= to the Board on which there were audit objections; that since proceedings were pending against him, he gave an undertaking to the effect of authorising the respondent to recover the loss caused by him/payable by him due to his omissions, negligence and carelessness from his terminal benefits and that he had no objection for such recovery from his Death-cum-Retirement Gratuity, commutation pension and Dearness Allowance on pension etc. payable to him; that only in view of the said undertaking given, he was permitted to retire from service; that because of the action of the petitioner, the Board sustained a loss of Rs.2,05,191/= during 1993-95 which he is bound to make good; that only pending finalisation of the loss, he was

allowed to draw provisional pension on humanitarian grounds. On such contentions, the respondent would ultimately pray to dismiss the said writ petition with costs.

8. During arguments, the learned counsel for the petitioner, besides tracing the facts and circumstances which have already been pleaded in all the above writ petitions, would point out that as per the letter dated 24.9.1996, the petitioner was allowed to retire from service on 30.9.1996 and therefore the tie is snapped between the petitioner and the respondent; that while so, the Tamil Nadu Pension Rules come into play, which are applicable to the employees of the Tamil Nadu Khadi and Village Industries Board and would lay emphasis on Regulation 48 of the Board's Regulations. The learned counsel would also cite the following four judgments:

1. A.I.R. 1985 Supreme Court 356 (STATE OF KERALA AND OTHERS vs. M. PADMANABHAN NAIR)

2. A.I.R. 1990 Supreme Court 10 (S.S.RATHORE vs. STATE OF MADHYA PRADESH)

3. 1995 Supp (3) Supreme Court Cases 56 (STATE OF BIHAR AND OTHERS vs.

MOHD.IDRIS ANSARI) and

4. 2000-II-LLJ 253 (VIJAY L.MEHROTRA AND STATE OF U.P. AND OTHERS)

9. So far as the first judgment cited above is concerned, the Honourable Apex Court has held:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The liability to pay penal interest on these dues at the current market rate commences at the expiry of two months from the date of retirement."

10. So far as the second judgment cited above is concerned, a larger Bench of the Honourable Apex Court, while determining the cause of action for the purpose of limitation applicable to decisions of Departmental Tribunals, held:

"In the case of a service dispute the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen."

11. In the third judgment cited above, the Honourable Apex Court, in a case wherein a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent, applying the proviso (a)(ii) to Rule 43(b) of the Bihar Pension Rules, would remark that `it must be shown that in departmental proceedings or in judicial proceedings, the Government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings' and therefore would hold that `apparently no departmental proceedings could have been initiated in 1993 against the respondent under the said Rule in connection with the alleged misconduct of the year 1986 -87.'

12. In the last judgment cited above, which too is by the Honourable Apex Court, it has been held that `in case of an employee retiring after having rendered service, it is expected that all the payment of retiral

benefits should be paid on the date of retirement or soon thereafter....' On such arguments, the learned counsel appearing on behalf of the petitioner would ultimately pray to allow the writ petitions as prayed for.

13. On the contrary, the learned counsel appearing on behalf

of the respondent, besides extracting what has been stated in the counter affidavit filed on behalf of the respondent would pin-pointedly say that all the writ petitions are defective on the very face of them on account of the legal error made in the very cause title thereby wrongly terming the Assistant Director, Khadi and Village Industries Board as representing the Government of Tamil Nadu and at this score itself the writ petitions become liable to be dismissed as untenable in law. He would further lay emphasis on the irregularities committed on the part of the petitioner while he was working as the Chairman of the Purchase Committee to purchase neem seeds to the Board for the years 1993 to 1996 and therefore the respondent authority is right in having initiated the disciplinary proceeding against him. The learned counsel would further point out that none of the judgments cited on the part of the petitioner would apply to the facts of the case. The learned counsel would also argue that neither the Regulation 48 nor Regulation 34(b) of the Tamil Nadu Khadi and Village Industries Board Service Regulations, 1996 nor even Rule 9(2)(b) and 9(2)(6) of the Pension Rules of Tamil Nadu would come to the rescue of the petitioner since the petitioner's case do not at all fall under the purview of these provisions of law. On such arguments advanced, the learned counsel appearing on behalf of the respondent would ultimately pray to dismiss all the above writ petitions as bereft of any merit.

14. In consideration of the facts and circumstances brought forth by the petitioner in the pleadings of the writ petitions, having regard to the materials placed on record and upon hearing the learned counsel for both what could be gathered is that it is a disciplinary proceeding initiated against the petitioner first by issuing the letter dated 18.2.1999 thereby stating that since certain audit objections and lapses were pending pertaining to the service period of the petitioner, only a provisional pension could be allowed and only based on the outcome of the decision arrived at, the retirement benefits would be allowed and the said letter is impugned in the second writ petition above. The impugned order in the first writ petition above is the show cause notice dated 26.3.1999 issued by the respondent thereby seeking his explanation as to why recovery of the loss sustained by the Board should not be effected from his terminal benefits and the impugned order in the third writ petition above is also the show-cause notice dated 15.10.1999 thereby framing charges against the petitioner. All these impugned orders gave way for the petitioner to initiate all the above three writ petitions at the relevant points of time.

15. The subject matter for such proceeding to be initiated against the petitioner is the irregularities committed on the part of the petitioner while serving as the Assistant Director of Khadi and Village Industries Board, Virudhunagar from 1.10.1993 to 14.5.1995 and in such capacity acting as the Chairman of the Purchase Committee he purchased neem seeds and it came to be found that the said purchases were of inferior quality and the price fixed was far higher than the market value, resulting in a loss of Rs.3,38,406/= to the Board, which had also been brought to light by the audit report.

16. The pertinent question that arises for consideration in the wake of the allegation of the writ petition and in the light of the

judgments of the Apex Court cited is, `whether it is right on the part of the respondent Board to have initiated the disciplinary proceeding against the petitioner further refusing to pay to the petitioner the retiral benefits after having allowed the petitioner to actually retire from service on 30.9.1996 on attaining his superannuation?'

17. Though this point of law has been highlighted on the part of the petitioner, nowhere the petitioner has stated that he assured in writing to the Board authorities that he might be allowed to retire on superannuation subject to the pendency of the enquiry instituted against him and further agreeing to get the retiral benefits on conclusion of the enquiry and till such time expressing his satisfaction on releasing the provisional retiral benefits which have been provided for by the respondent Board that too purely on humanitarian consideration.

18. This arrangement made in a cordial atmosphere, the petitioner assuring to cooperate with the disciplinary enquiry to attain its logical conclusions, had neither been brought forth in any of the writ petitions nor had his case been based on such foundations which have been disclosed though technically it could not be branded as suppression of facts. However, the judgments cited and the provisions of law shown from the Rules and Regulations concerned cannot at all become applicable to the petitioner especially Rule 9(2)(b) and 9(2)(6) of the Tamil Nadu Pension Rules, which has been clearly given that only an enquiry shall not be instituted in respect of an event which took place more than four years before such institution whereas here the delinquencies forming part of the disciplinary proceeding are alleged to have been committed on the part of the petitioner in between 1993 and 1996 and therefore even prior to the retirement of the petitioner, the disciplinary proceedings having been initiated with the showcause notice dated 26.3.1993 which is impugned in the second writ petition, there is absolutely no bearing for this Rule nor could it at any stretch of imagination be considered that in the usual course, having allowed the petitioner to retire, later the domestic enquiry has been commenced by the Board's authorities. If at any delay has been caused to the present day, it is only because of the petitioner having filed the above writ petitions and stalling the proceedings by the interim orders passed by this Court and definitely not on account of any delay that has been caused on the part of the respondent Board.

19. So far as the judgments cited on the part of the petitioner are concerned, in the first judgment referred to above, the Honourable Apex Court has held in the manner extracted supra that in cases of culpable delay in settlement and disbursement thereof which must be visited with the penalty of payment of interest at the current market rate till actual payment. But, the case in hand is not one in which either there is any culpability in the payment of the retiral benefits of the petitioner or any delay in settlement in the normal course, but, based on an enquiry initiated prior to retirement and on assurance given by the petitioner that on ascertainment of the figures of loss, it could be deducted from the final payment, and therefore, the general proposition held by the Honourable Apex Court does not in any manner apply to the facts of the case in hand.

20. Likewise, in the second judgment also, it is the limitation question which is the subject matter and the Honourable Apex Court has fixed the time limit in the context of the cause of action and it is not the limitation question which is the subject matter of the case in hand and hence the second judgment cannot also come to the rescue of the petitioner in deciding his case.

21. In the third judgment, since the Rules prescribe that in the case of a retiring person, the alleged misconduct should have taken place within the last six years, from the time of initiating the proceedings and since in the case in hand, the action was initiated in the year 1993, for an alleged misconduct of the year 1986-87, the Honourable Apex Court held that `no action could be taken under Rule 43(b) of the Bihar Pension Rules.' This is not the question involved in the case of the petitioner even though the same four year period is prescribed in the Tamil Nadu Pension Rules which is working against the interest of the petitioner since the loss occasion on account of mismanagement of the petitioner was during 1993 and 1996 and action has been well initiated in the year 1996 itself and therefore there is no question of the petitioner seeking protection under the relevant Rule quoted by him in the grounds of third writ petition above.

22. So far as the last judgment of the Honourable Apex Court holding that the payment of retiral benefits should be made on the date of retirement or soon thereafter is concerned, it cannot also be applied to the case of the petitioner in the sense that the said proposition applies to the normal retirement of a person of the status of the petitioner without any disciplinary proceeding initiated against much less on a heavy loss caused to the department on account of the mismanagement of the delinquent which is the case of the petitioner herein and therefore this proposition also cannot be held applicable to the case of the petitioner.

23. For all the above reasons assigned, there is absolutely no iota of genuineness or legality attached to the reliefs sought for in any of the writ petitions which have been filed only to stall the disciplinary proceedings and it is not at all desirable to prolong the proceeding thus allowing it to become stale. Therefore, an early enquiry held and decision arrived at by the disciplinary authority alone will be the answer. None of the notices or orders impugned in all the above three writ petitions could be either held bad in law or is there any necessity on the part of this Court to interfere with the same as it has been sought for on the part of the petitioner in the prayer columns of all the writ petitions and therefore the only valid conclusion that could be arrived at by this Court in the circumstances of the case is to dismiss all the above writ petitions as without merit and allowing the disciplinary proceeding instituted already to attain its logical ends.

24. Absolutely, no legal infirmity or inconsistency or error apparent on the face of the record or lack of opportunity in violation of the principles of natural justice or any such legal ills or any such illegality has crept into all the notices and orders impugned in the above writ petitions and therefore the only conclusion that could be arrived at by this Court is to

dismiss all the above writ petitions.

In result, all the above writ petitions fail and they are dismissed as such.

However, in the circumstances of the cases, there shall be no order as to costs.

Consequently, W.M.P.No.11181, 11202 and 26819 of 1999 are also dismissed.

Index: Yes.
Internet: Yes
Rao 26.6.2002.

To

The Assistant Director,
Khadi & Village Industries,
Tamil Nadu,
Khadi & Village Industries Board,
Virudhunagar.

V.KANAGARAJ, J.

Common Order in W.P.NOS.
7851,7869 & 18379/ 1999
WMP.NOS.11181,11202 & 26819/1999